

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208715

DATE: May 10, 1984

MATTER OF: Ginny L. Ater, et al. -- Claims Under
Panama Area Wage Base

DIGEST:

Employees of Department of Defense (DOD) in Panama claim higher pay based on General Schedule rates. Decision of DOD to adopt lower-paying Panama Area Wage Base for U.S. employees in Panama is authorized under Panama Canal Act of 1979. Claim is denied since these employees have no entitlement to pay based on General Schedule rates.

ISSUE

The issue in this decision concerns the entitlement of United States citizens employed by the Department of Defense in the Republic of Panama to pay based upon General Schedule rates. We hold that these employees may be paid at the lower Panama Area Wage Base rate instead of the General Schedule rate in view of the authority in the Panama Canal Act of 1979 permitting agencies to adopt that lower pay schedule.

BACKGROUND

This decision is in response to a claim filed by Albert J. Joyce, an attorney who represents approximately 61 employees of the Department of Defense in the Republic of Panama.

Mr. Joyce contends that these employees, who are United States citizens employed by the Department of Defense (DOD) in Panama, are entitled to compensation based on General Schedule rates. He states that DOD unilaterally decided to adopt the Panama Area Wage Base, which has a much lower rate of pay for equivalent positions, and this action affects compensation as well as such benefits as life insurance, leave, within-grade increases, and retirement. Mr. Joyce argues that the Panama Area Wage Base was not imposed upon

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United States citizens employed by DOD by the terms of the Panama Canal Treaty of 1977, which was ratified by the United States Senate. Therefore, he argues that since the Panama Area Wage Base was not ratified or approved by the Congress, it cannot be substituted for the General Schedule rates of pay which should continue for these DOD employees.

Mr. Joyce points out that the claimants are employees of DOD, not the Panama Canal Commission, and that the claimants are governed by the Status of Forces Agreement (SOFA) between the United States and the Republic of Panama, not by Article X (employment with the Panama Canal Commission) of the Panama Canal Treaty of 1977, or the Panama Canal Act of 1979.

We requested comments on Mr. Joyce's claim from both the Panama Area Personnel Board and DOD. The report from DOD states that although Mr. Joyce claims compensation under the General Schedule in accordance with Chapter 53 of Title 5, United States Code, DOD elected to participate in the Panama Canal Employment System and is, therefore, excluded from the provisions of Chapter 53. See 5 U.S.C. §§ 5102(c)(12) and 5331(b) (1982). The report states further that this applies to all employees under the Panama Canal Employment System without regard to how the employee was appointed into the system, by transfer, local hire, or recruitment.

The report from DOD points out that the 1955 Treaty of Mutual Understanding and Cooperation and Related Memorandum of Understanding required no discrimination on the basis of citizenship in base pay for similar positions, and it did not require that all positions must be paid on United States (General Schedule) rates. The report states further that to be competitive and for recruiting purposes, many positions were paid at U.S. rates, but as more positions were filled with "local hires," these positions were paid at local rates, but with "grandfather" protection for employees who had previously been hired at the higher U.S. rates.

The DOD report continues that with the signing of the Panama Canal Treaty of 1977, DOD continued to recruit locally to the greatest extent possible. When DOD implemented the new pay base on October 1, 1979, current employees who were receiving a higher rate of pay received "grandfather" protection under the provisions of 5 C.F.R. §§ 251.12 and 251.41. Such protection applied only to employees who were working under the Canal Zone Merit System

(now Panama Canal Employment System) who continued in employment without a break in service of more than 3 days. See 35 C.F.R. §§ 251.2 and 251.12(b)(1).

Thus, the report from DOD concludes that all employees covered by the Panama Canal Employment System are (1) excluded from 5 U.S.C. Chapter 53 and are paid in accordance with 35 C.F.R. Part 251, (2) that the "grandfather" provisions are limited and do not extend to employees who received higher rates of pay while employed by Federal agencies in the United States, and (3) that the Panama Area Wage Base is not new but simply extends a practice begun in 1955 to pay local rates for positions which can be filled without recruiting in the United States.

The report from the Panama Area Personnel Board provided similar information.

DISCUSSION

The Panama Canal Act of 1979, 22 U.S.C. §§ 3601-3871 (1982), which implemented the Panama Canal Treaty of 1977, established the Panama Canal Employment System. See 22 U.S.C. §§ 3651-3665. As noted by the report from DOD, employees under the Panama Canal Employment System receive compensation under the provisions of 35 C.F.R. Part 251 (1983).

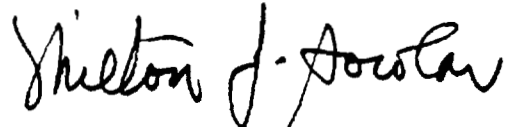
Under the authority of 22 U.S.C. § 3652(b)(2), the head of any Executive agency "may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama." This is the authority cited by DOD for its action to adopt the Panama Area Wage Base for DOD employees employed in Panama. See 35 C.F.R. § 251.4.

As noted by the report from DOD, employees of an Executive agency which has elected coverage under section 1212(b)(2) of the Panama Canal Act (22 U.S.C. § 3652(b)(2)), are excluded from coverage under 5 U.S.C. Chapter 53, Subchapter III, governing the General Schedule pay rate system, and coverage under 5 U.S.C. Chapter 51, governing the classification of positions. See 5 U.S.C. §§ 5331(b) and 5102(c)(12) (1982), as amended by section 3302(e)(6) of the Panama Canal Act of 1979, Public Law 96-70, 93 Stat. 452, 498.

By its terms, the Panama Canal Act of 1979 implemented the Panama Canal Treaty of 1977 and related agreements between the United States and the Republic of Panama. Section 2 of Public Law 96-70, 93 Stat. 452, 455 (22 U.S.C. § 3601). Although Mr. Joyce contends that the action by DOD to unilaterally adopt the Panama Area Wage Base was not an action ratified by the Congress, we conclude that such action was clearly authorized by the terms of the Panama Canal Act of 1979 which was enacted by the Congress. In view of the authority contained in the Panama Canal Act of 1979, we find no entitlement by United States citizens employed in Panama by Federal agencies to compensation based upon the General Schedule rates of pay.

Mr. Joyce also contends that the authority by DOD denies United States citizens the General Schedule pay rate and therefore discriminates in violation of section 106 of Public Law 92-129, 85 Stat. 348, 355 (1971). That section prohibits discrimination in the employment of civilian personnel at any DOD facility in any foreign country because the person is a citizen of the United States. However, since we conclude that these employees in Panama have no entitlement to pay based on the General Schedule, we are unable to conclude that the adoption of the Panama Area Wage Base discriminates against these employees.

Accordingly, we conclude that these employees are not entitled to higher pay based on the General Schedule.



Acting Comptroller General
of the United States